

Expedited Processing  
Application No. 10/651,824  
Amd. Dated:  
Reply to Final Office Action mailed December 5, 2006

RECEIVED  
CENTRAL FAX CENTER

FEB 05 2007

REMARKS/ARGUMENTS

Entry of this amendment and reconsideration of the grounds for rejection stated in the final Office Action are respectfully requested. The only amendment made is changing of the words "penetrating member" to ~~—catheter—~~in claim 1. Also, claim 15 has been cancelled. No new matter has been added. Specific support for this amendment is found in the specification, including the sentence set forth at page 17, line 27. This simple amendment does not raise any new issues and will not necessitate further searching. Furthermore, by cancellation of claim 15, this amendment reduces the number of claims to be considered on appeal. Additionally, as explained blow, this amendment places the claims in condition for allowance. Thus, entry of this amendment on an "after final" basis is proper.

In the final Office Action claims 1-20 were rejected as being anticipated by United States Patent No. 5,499,995 (Teirstein). In support of this rejection, the final Office Action states that the lumen blocking portion (36) of the Teirstein device is penetrable by advancement of a penetrating member (20) through the lumen blocking portion (36) while the device is implanted within a body lumen. These statements are simply incorrect. In reality, Teirstein contains no disclosure or suggestion of any penetrating member penetrating through any portion of his device. Rather, Tierstein describes some over-the wire embodiments of his device which have guidewire lumens extending through the device and a "guidewire port 44" formed in the "sealing membrane 36." Teirstein's item 20 is not a penetrating member. It is a guidewire over which those over-the-wire embodiments of his device may be advanced. After the device is implanted in the body lumen, the guidewire 20 is removed. Teirstein provides no teaching or suggestion as to the use of this guidewire 20 (or of any other object) for the purpose of penetrating through the sealing member 36 after the device has been implanted in a body lumen. Nor does Teirstein even mention or recognize the desirability of being able to re-

Expedited Processing  
Application No. 10/651,824  
Amd. Dated:  
Reply to Final Office Action mailed December 5, 2006

RECEIVED  
CENTRAL FAX CENTER

FEB 05 2007

penetrate through the sealing member 36 after the device has been implanted in a body lumen.

In Teirstein's described embodiments, remnants of the catheter body 62, 54 or delivery wire 20' and/or a check valve 56 and/or portions of a wire frame 42 are present on the ends of the device after it has been is implanted. These items are clearly not designed to be penetrated *in situ* and Teirstein makes no mention or suggestion as to how or why one would endeavor to penetrate through these portions of the device after the device has been implanted.

By the foregoing amendment, the language of independent claim 1 has been clarified to state that the lumen blocking portion if the claimed device is penetrable *in situ* by advancement of a catheter through the lumen blocking portion while the device is implanted within the body lumen. Not only does Teirstein not describe any *in situ* penetration of his device, person of skill in the art would clearly perceive the described embodiments of the Teirstein device as not being constructed in a manner that would allow them to be penetrated *in situ* by an advancing catheter.

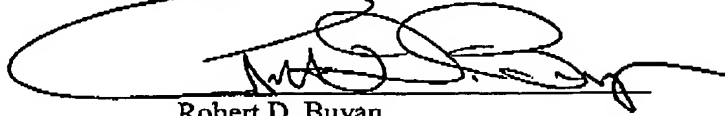
### Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. No fee is seen to be due in connection with this filing. However, the Commissioner is hereby authorized to charge any fee which may properly be deemed to be due in connection with this filing from Deposit Account No. 50-0878. If the Examiner feels that a telephone conference would

Expedited Processing  
Application No. 10/651,824  
Amd. Dated:  
Reply to Final Office Action mailed December 5, 2006

in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (949)450-1750.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert D. Buyan', is written over a horizontal line.

Robert D. Buyan  
Registration No. 32,460  
Attorney for Applicant

STOUT, UXA, BUYAN & MULLINS, LLP  
4 Venture, Suite 300  
Irvine, CA 92618  
Telephone: (949)450-1750  
Facsimile: (949)450-1764